

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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In re: ) Chapter 11  
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ALPHA NATURAL RESOURCES, INC., et al. ) Case No. 15-33896-KRH  
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Debtors. ) Jointly Administered  
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**OBJECTION AND RESERVATION OF RIGHTS OF POCAHONTAS  
LAND CORPORATION, POCAHONTAS DEVELOPMENT CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY TO DEBTORS' NOTICES OF  
POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES AND CURE AMOUNTS**

Pocahontas Land Corporation ("PLC"), Pocahontas Development Corporation ("PDC"), and Norfolk Southern Railway Company ("Norfolk Southern"), by their undersigned counsel, Frost Brown Todd LLC and Christian & Barton, LLP, file this objection ("Objection") to the above-captioned Debtors' (the "Debtors"): *Notice of (A) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (B) Cure Amounts* [Docket No. 987] (the "First Notice"); *Second Notice of (A) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (B) Cure Amounts* [Docket No. 1081] (the "Second Notice"); and *Third*

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*Notice of (A) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (B) Cure Amounts* [Docket No. 1136] (the “Third Notice,” and together with the First Notice and Second Notice, the “Notices”). In support of their Objection, PLC and Norfolk Southern respectfully state:

### **BACKGROUND**

1. On August 3, 2015 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Eastern District of Virginia (this “Court”).
2. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
3. PLC is one of the largest lessors in these chapter 11 cases; as of the Petition Date, the Debtors and PLC were parties to approximately 400 active leases, contracts and other agreements (collectively, the “PLC Leases”).<sup>1</sup> In addition, as of the Petition Date, the Debtors and Norfolk Southern (or its affiliated entities) were parties to certain leases and contracts (collectively, the “Norfolk Southern Leases”), certain of which are administered by PLC as agent for Norfolk Southern (collectively, the “PLC Administered Leases”).<sup>2</sup>
4. On October 22, 2015, the Debtors filed their *Combined Motion for Entry of (A) An Order Establishing Bidding and Sale Procedures for the Potential Sale of Certain Mining Properties and Related Assets and Granting Related Relief and (B) One or More Orders Approving*

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<sup>1</sup> Any reference to PLC shall also be construed as referring to PDC. Additionally, any and all leases, contracts, and other agreements between PDC and the Debtors are included in the PLC Leases.

<sup>2</sup> On information and belief, the PLC Administered Leases included in the Potentially Assigned Agreements (as defined below) are: NEI-00007, NEI-00008, NEI-00004, NEI-00006, and NEI-00001.

*the Sale of Such Properties* [Docket No. 707] pursuant to which the Debtors sought the entry of one or more orders approving the sale of some or all of the Assets (which are comprised of Assets relating to closed and idled mines that (a) are not generating revenue for the Debtors' businesses but (b) impose reclamation, maintenance and other costs on the Debtors' estates) and authorizing the assumption and assignment of executory contracts and leases (the "Sale Motion").

5. On November 6, 2015, this Court entered its *Order (I) Approving Bidding and Sale Procedures for Certain Mining Properties and Related Assets, (II) Approving the Form and Manner of Notice of the Related Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Scheduling an Auction and Sale Hearing* [Docket No. 855] (the "Bidding Procedures Order"). The Bidding Procedures Order approved, among other things, procedures to govern the Debtors' proposed assumption and assignment of certain executory contracts and unexpired leases and the establishment of cure amounts.

6. On November 23, 2015, the Debtors filed their First Notice, by which the Debtors gave notice of their intent to assume and assign certain of the Debtors' unexpired executory contracts and leases associated with certain of the Debtors' mining assets and operations<sup>3</sup> (the "Potentially Assigned Agreements" as defined in the First Notice), including certain of the PLC Leases and certain of the Norfolk Southern Leases. The First Notice also identified the amounts the Debtors assert as being required to cure any obligations to PLC and Norfolk Southern as a condition of the assumption and assignment of the PLC Leases and the Norfolk Southern Leases listed among the Potentially Assigned Agreements (the "Cure Costs" as defined in the First Notice). The Debtors

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<sup>3</sup> The mining assets are identified in Annex A of the Notice of Filing of Modified Asset Schedule [Docket No. 985] (the "Assets"). The Assets have been modified per the Debtors' Second Notice of Filing of Modified Asset Schedule in Connection with Bidding Procedures [Docket No. 1011] and the Notice of Filing of Updated Asset and Permit Schedules [Docket No. 1077].

subsequently filed the Second Notice and Third Notice, which amend the schedule of Potentially Assigned Agreements and Cure Costs appended to the First Notice.

7. The Notices and the Bidding Procedures Order establish January 11, 2016, as the deadline to object to: (a) the Cure Costs asserted by the Debtors; and (b) the assumption and assignment of any Potentially Assigned Agreements, other than objections regarding adequate assurance of future performance by a successful bidder for the Assets. The Notices and the Bidding Procedures Order establish a separate deadline for objecting to the proposed assumption and assignment of executory contracts or unexpired leases to a successful purchaser of the Assets.<sup>4</sup>

8. The Debtors separately filed their *Notice of Auction and Sale Hearing for the Sale of Certain of the Debtors' Mining Properties* [Docket No. 986] (the "Sale Notice"). The Sale Notice and Bidding Procedures Order establish January 20, 2016 as the deadline for objections to the proposed sale(s) of the Assets.<sup>5</sup>

### **OBJECTION**

9. PLC and Norfolk Southern object to the Notices and the proposed assumption and assignment of the PLC Leases and the Norfolk Southern Leases listed among the Potentially Assigned Agreements for the following reasons.

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<sup>4</sup> The deadline as established in the Notices and the Bidding Procedures Order is the earlier of: (a) five business days after filing and serving a notice of a successful bid; and (b) two business days before commencing a sale hearing. PLC and Norfolk Southern expressly reserve their right according to the Bidding Procedures Order to object to the assumption and assignment of any of the PLC Leases or the Norfolk Southern Leases to a successful purchaser of the Assets, and nothing in this Objection should be construed as a waiver of such right of PLC and Norfolk Southern.

<sup>5</sup> PLC and Norfolk Southern expressly reserve their right to object to the Sale Motion and a proposed sale(s) of the Assets and nothing in this Objection should be construed as a waiver of such right by PLC and Norfolk Southern.

10. First, the Notices fail to provide sufficient information for PLC and Norfolk Southern to reasonably determine which of the PLC Leases and the Norfolk Southern Leases are included in the Potentially Assigned Agreements.

11. Second, PLC and Norfolk Southern object to the Notices and the relief requested by the Debtors to the extent that, upon information and belief, the Debtors have not accurately identified each of the PLC Leases and the Norfolk Southern Leases in the Potentially Assigned Agreements that are associated with the Assets that the Debtors intend to sell as part of the proposed sale(s).

12. Third, PLC and Norfolk Southern object to the Cure Costs identified in the Notices to the extent that the Cure Costs seek to alter or relieve the Debtors or any proposed assignee of any of the PLC Leases or the Norfolk Southern Leases of any of the requirements under section 365 of the Bankruptcy Code.

13. Fourth, PLC and Norfolk Southern object to the Notices and the relief requested by the Debtors to the extent that the Debtors do not propose to assume and assign all of the terms, covenants, conditions and obligations under the PLC Leases and the Norfolk Southern Leases, including, without limitation, any and all rights of indemnification, contribution and development for which PLC and Norfolk Southern are entitled from the Debtors pursuant to the PLC Leases and the Norfolk Southern Leases and under applicable law.

14. Fifth, PLC and Norfolk Southern object to the Notices and the relief requested by the Debtors to the extent that certain of the PLC Leases identified on the schedule of Potentially Assigned Agreements are not executory contracts which can be assumed and assigned by the Debtors under section 365 of the Bankruptcy Code and, instead, are interests in the underlying land.

15. Finally, PLC and Norfolk Southern object to the assumption and assignment of the PLC Leases and the Norfolk Southern Leases until the Debtors provide adequate assurance of future performance to PLC and Norfolk Southern under each of the PLC Leases and the Norfolk Southern Leases that is acceptable to PLC and Norfolk Southern.

**A. Failure to specifically and accurately identify the PLC Leases and the Norfolk Southern Leases or schedule all possible PLC Leases and Norfolk Southern Leases.**

16. PLC and Norfolk Southern object to the Notices because the Debtors have not provided sufficient and detailed information for this Court, PLC, and Norfolk Southern to identify each of the Potentially Assigned Agreements listed in the Notices. As a result, PLC and Norfolk Southern have been unable to identify each of the PLC Leases and the Norfolk Southern Leases that are included in the Potentially Assigned Agreements. For example, the Debtors have listed on Exhibit A to each of the Notices only the contract numbers used *by the Debtors* to identify the Potentially Assigned Agreements without providing further identifying information, including the date that each of the Potentially Assigned Agreements were executed, amended, or became effective. Furthermore, the counterparties listed on Exhibit A to each of the Notices are not complete and only partially identify the counterparties named on the PLC Leases and the Norfolk Southern Leases.

17. On or about December 18, 2015, counsel for PLC contacted counsel for the Debtors seeking clarification of the Potentially Assigned Agreements listed in the Notices. A copy the December 18<sup>th</sup> Letter is attached hereto as Exhibit A. On or about December 30, 2015, counsel for the Debtors provided counsel for PLC with a supplemental schedule of the PLC Leases prepared by

the Debtors (the “Supplemental Schedule”).<sup>6</sup> A copy of the Supplemental Schedule is attached hereto as Exhibit B. On January 7, 2016, counsel for PLC sent a follow up letter to counsel for the Debtors setting forth additional issues that PLC and Norfolk Southern were having identifying the Potentially Assigned Agreements and requesting a call with the Debtors. A copy of the January 7th Letter is attached hereto as Exhibit C.

18. While the Supplemental Schedule provides PLC and Norfolk Southern with some additional clarity, it remains impossible for PLC to definitively identify each of the PLC contracts and leases listed on the Supplemental Schedule or reconcile each of those PLC contracts and leases with the Potentially Assigned Agreements scheduled on the Notices due to insufficient and/or inaccurate identifying information provided by the Debtors.<sup>7</sup>

19. If the Debtors intend to assume and assign any of the PLC Leases or the Norfolk Southern Leases, the Debtors must provide detailed information to this Court, PLC, and Norfolk Southern that properly identifies all PLC Leases and Norfolk Southern Leases. Given the failure of the Debtors to clearly and accurately identify each of the PLC contracts and leases and the Norfolk Southern contracts and leases included in the Potentially Assigned Agreements, PLC and Norfolk Southern cannot reconcile the Notices with their business records and are unable to determine if there are additional PLC contracts and leases and Norfolk Southern contracts and leases that the

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<sup>6</sup> Upon information and belief, the Supplemental Schedule incorrectly lists PLC as a contract party or an agent of a contract party for the following leases or contracts (as identified by the Alpha Natural Resources contract number): 1254H, 1254J, KNO-00076, and KNO-00131. Regarding leases or contracts 1254H and 1254J, upon information and belief, PLC is not a party to any leases or contracts with “David L. Francis Trust.” Regarding leases or contracts KNO-00076 and KNO-00131, PLC is not affiliated with Pocahontas Gas Partnership and, therefore, is not a party to those leases or contracts.

<sup>7</sup> Specifically, PLC is unable to reconcile the following PLC contracts and leases scheduled by the Debtors in the Potentially Assigned Agreements in the Notices (as identified by Alpha Natural Resources contract number): RIV-00092, DEL-00001, DMC-9, BCL-246, BRS-00030, NEI-00008, NEI-00004, NEI-00013, and NEI-00014.

Debtors intend to assume and assign in connection with the proposed sale(s) of the Assets that are not among the Potentially Assigned Agreements.

20. PLC and Norfolk Southern believe that the Debtors must amend the Notices and the schedule of Potentially Assigned Agreements to clearly and accurately identify each of the PLC Leases and the Norfolk Southern Leases that the Debtors intend to assume and assign in connection with the proposed sale of the Assets. PLC and Norfolk Southern cannot be bound by any assumption and assignment of the PLC Leases and the Norfolk Southern Leases until each of the PLC Leases and the Norfolk Southern Leases are completely and accurately scheduled by the Debtors and such schedules are filed with this Court (with PLC and Norfolk Southern afforded a reasonable time to review and object as necessary to those amended schedules).

21. Accordingly, PLC and Norfolk Southern object to the Notices and the relief requested by the Debtors until each of the PLC Leases and the Norfolk Southern Leases that are to be assumed and assigned in connection with the proposed sale(s) of the Assets are clearly identified and properly included in an amended schedule of Potentially Assigned Agreements.

22. PLC and Norfolk Southern submit that this Court should compel the Debtors to amend the Notices prior to the hearing scheduled on the Sale Motion and that the objection deadline for lessors and contract parties, such as PLC and Norfolk Southern, should be extended to allow for their review of any amended Notices.<sup>8</sup>

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<sup>8</sup> PLC and Norfolk Southern also reserve their right to review and object to any asset purchase agreement submitted in connection with the proposed sale(s) of the Assets and any accompanying schedules that identify any of the PLC Leases and the Norfolk Southern Leases that a proposed purchaser intends to purchase to ensure that the asset purchase agreement and accompanying schedules of the proposed purchaser (as well as any proposed assumption and assignment agreement for any of the PLC Leases or the Norfolk Southern Leases) conform with the Notices filed by the Debtors and the business records of PLC and Norfolk Southern, among other things.

**B. Objection to Cure Costs.**

23. PLC and Norfolk Southern object to the Debtors' proposed assumption and assignment of the PLC Leases and the Norfolk Southern Leases absent strict compliance by the Debtors with the requirements of section 365 of the Bankruptcy Code. In accordance with section 365 of the Bankruptcy Code, any assumption and assignment of the PLC Leases and the Norfolk Southern Leases must be conditioned on the Debtors first paying to PLC and Norfolk Southern any and all amounts due and owing under the PLC Leases and the Norfolk Southern Leases through the effective date of the assumption and assignment of such leases, in accordance with section 365(b)(1)(A) of the Bankruptcy Code. *See 11 U.S.C. § 365(b)(1)(A).*<sup>9</sup>

24. In the Notices, the Debtors assert an aggregate cure amount of \$1,199,752.40 with respect to all PLC Leases that are included in the Potentially Assigned Agreements (the "Debtors' Proposed PLC Cure Amount"). PLC disagrees with the Debtors' Proposed PLC Cure Amount and submits that the correct cure amount, with respect to those PLC Leases that PLC has been able to identify, is in the aggregate amount of not less than \$4,521,071.40 as of the date of this Objection (the "PLC Cure Amount").<sup>10</sup> Attached as Exhibit D is a schedule setting forth: (a) each of the PLC Leases scheduled in the Potentially Assigned Agreements that PLC has been able to identify; (b) additional PLC Leases that are associated with the Assets; (c) the Debtors' Proposed PLC Cure Amount; and (d) the PLC Cure Amount.

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<sup>9</sup> Section 365(b)(1)(A) of the Bankruptcy Code provides that "[i]f there has been a default...the trustee may not assume such contract or lease unless...the trustee...cures, or provides adequate assurance that the trustee will promptly cure, such default." *In re Shangra-La, Inc.*, 167 F.3d 843 (4th Cir. 1999), quoting 11. U.S.C. § 365(b)(1)(A).

<sup>10</sup>All cure amounts associated with PLC Administered Leases are included in the Debtors' Proposed Cure Amount and the PLC Cure Amount.

25. The PLC Cure Amount represents the amount currently due and owing to PLC under each of the PLC Leases that PLC has been able to identify among the Potentially Assigned Agreements. The amounts owing under each of the PLC Leases and the PLC Cure Amount may increase prior to the actual effective date of assumption and assignment of any of the PLC Leases if the Debtors fail to pay all amounts to PLC that accrue or are due and owing after the date of this Objection.<sup>11</sup> Accordingly, PLC expressly reserves the right to amend or supplement this Objection and the PLC Cure Amount from time to time or at any time.<sup>12</sup>

26. Upon information and belief, the Debtors have scheduled nineteen (19) contracts or leases to which Norfolk Southern is a counterparty.<sup>13</sup> The Debtors assert an aggregate cure amount of \$0.00 for the Norfolk Southern Leases that are included in the Potentially Assigned Agreements (the “Debtors’ Proposed Norfolk Southern Cure Amount”). Norfolk Southern disagrees with the Debtors’ Proposed Norfolk Southern Cure Amount and submits that the correct cure amount totals

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<sup>11</sup> Under the terms and conditions of the PLC Leases and the Bankruptcy Code, the Debtors remain liable for: (a) post-petition payments due under the PLC Leases, including any and all additional amounts owing for post-petition unmined mineral taxes for which the Debtors are responsible; (b) any and all amounts due and owing under the PLC Leases, but which may be unbilled as of the date of this Objection; (c) satisfying any non-monetary defaults under the PLC Leases; and/or (d) satisfying and/or complying with any and all insurance, indemnification and contribution obligations under each of the PLC Leases. 11 U.S.C. § 365(b)(1)(A) and (B); 11 U.S.C. § 365(d)(1); *see, e.g., In re Pac-West Telecomm, Inc.*, 377 B.R. 119 (Bankr. D. Del. 2007) (debtor has statutory obligation to perform continuing obligations under unexpired nonresidential lease until lease is assumed or rejected). Any sale order entered by this Court should clearly state that the Debtors will assume and assign these lease and contractual obligations and pay them when due, regardless of whether they relate to the period prior to, or after, the closing of any sale and assignment of a PLC Lease. In addition, any provision in any sale order entered by this Court that purports to release the Debtors or any assignee of a PLC Lease of further liability based upon a payment of cure amounts must specify that such release does not apply to obligations to pay accrued or accruing, but unbilled, charges that come due under the PLC Leases.

<sup>12</sup> PLC and Norfolk Southern are only able to provide the information presently available regarding amounts owing by the Debtors, while reserving the right to amend this Objection as necessary to include any additional or unknown charges that arise. There is no basis to impose upon PLC and Norfolk Southern the equivalent of an administrative bar date, limiting their recourse to recover charges to which they are entitled under the PLC Leases and the Norfolk Southern Leases.

<sup>13</sup> After reduction for PLC Administered Leases.

\$1,170.48 as of the date of this Objection (the “Norfolk Southern Cure Amount”).<sup>14</sup> Attached as Exhibit E is a schedule setting forth: (a) each of the Norfolk Southern Leases that are scheduled in the Potentially Assigned Agreements that Norfolk Southern has been able to identify; (b) the Debtors’ Proposed Norfolk Southern Cure Amount; and (c) the Norfolk Southern Cure Amount.

27. The Norfolk Southern Cure Amount represents the aggregate amount currently due and owing to Norfolk Southern under each of the Norfolk Southern Leases that the Debtors intend to assume and assign in connection with the proposed sale(s) of the Assets. The amounts owing under the Norfolk Southern Leases and the Norfolk Southern Cure Amount may increase prior to the actual effective date of assumption and assignment of any of the Norfolk Southern Leases if the Debtors fail to pay to Norfolk Southern all amounts that accrue or are due and owing after the date of this Objection.<sup>15</sup> Accordingly, Norfolk Southern expressly reserves, without limitation, the right to amend or supplement this Objection, to object to the Cure Costs, and to propose alternative Norfolk Southern Cure Costs from time to time or at any time.

28. In addition, the Debtors are also liable for and must cure, as part of any assumption and assignment of the PLC Leases or the Norfolk Southern Leases, any and all defaults of any and

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<sup>14</sup> Based on the Norfolk Southern Leases that Norfolk Southern was able to identify as of the date of this Objection.

<sup>15</sup> Under the terms and conditions of the Norfolk Southern Leases and the Bankruptcy Code, the Debtors remain liable for: (a) post-petition payments due under the Norfolk Southern Leases, including any and all additional amounts owing for post-petition unmined mineral taxes for which the Debtors are responsible; (b) any and all amounts due and owing under the Norfolk Southern Leases, but which may be unbilled as of the date of this Objection; (c) satisfying any non-monetary defaults under the Norfolk Southern Leases; and/or (d) satisfying and/or complying with any and all insurance, indemnification and contribution obligations under each of the Norfolk Southern Leases. 11 U.S.C. § 365(b)(1)(A) and (B); 11 U.S.C. § 365(d)(1); see, e.g., *In re Pac-West Telecomm, Inc.*, 377 B.R. 119 (Bankr. D. Del. 2007) (debtor has statutory obligation to perform continuing obligations under unexpired nonresidential lease until lease is assumed or rejected). Any sale order entered by this Court should clearly state that the Debtors will assume and assign these lease and contractual obligations and pay them when due, regardless of whether they relate to the period prior to, or after, the closing of any sale and assignment of a Norfolk Southern Lease. In addition, any provision in any sale order entered by this Court that purports to release the Debtors or any assignee of a Norfolk Southern Lease of further liability based upon a payment of cure amounts must specify that such release does not apply to obligations to pay accrued or accruing, but unbilled, charges that come due under the Norfolk Southern Leases.

all express and implied development covenants and obligations in the PLC Leases and the Norfolk Southern Leases as a result of the cessation or the idling by the Debtors of their mining operations on the leased premises (as defined in each of the PLC Leases and the Norfolk Southern Leases).

29. PLC and Norfolk Southern are also entitled to attorneys' fees as part of the Cure Costs to the extent that any of the PLC Leases or the Norfolk Southern Leases so provide. *See, e.g.*, *In re Crown Books Corp.*, 269 B.R. 12 (Bankr. D. Del. 2001) (fees and costs recoverable as part of cure amounts under 11 U.S.C. § 365(b)(1)). PLC and Norfolk Southern seek fees in the amount of \$1,500 for each of the PLC Leases and the Norfolk Southern Leases that are assumed and assigned as part of the proposed sale(s) of the Assets.

30. Furthermore, each of the PLC Leases and the Norfolk Southern Leases impose certain contractual obligations on the Debtors including, without limitation, indemnification and contribution obligations that arise out of litigation or other claims that may be asserted or threatened against PLC and Norfolk Southern in connection with the PLC Leases and the Norfolk Southern Leases and the Debtors' mining operations, as well as express and implied development covenants and obligations. Each of these indemnification, contribution, and development covenants and obligations must be assumed, paid, and otherwise cured by the Debtors if any of the PLC Leases or the Norfolk Southern Leases are to be assumed and assigned by the Debtors in connection with the proposed sale of the Assets. PLC and Norfolk Southern object to the Proposed Cure Amount to the extent that the Proposed Cure Amount fails to include any amounts related to the indemnification, contribution, and development covenants and obligations for which the Debtors are responsible to PLC and Norfolk Southern under each of the PLC Leases and the Norfolk Southern Leases including, without limitation, any and all amounts or obligations that arise out of: (i) those certain consent decrees entered into in Case Nos. 2:13-cv-12500 and 2:13-cv-14877, both styled as *West*

*Virginia Highlands Conservancy et al. v. Pocahontas Land Corporation* (the “Consent Decrees”); (ii) Case No. 15-cv-15515, styled as *Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy Inc., and Sierra Club v. Pocahontas Land Corporation*, pending before the United States District Court for the Southern District of West Virginia (the “Pending Sierra Club Litigation”); and (iii) Civil Action No. 10-C-65, styled as *Roger Phillips et ux v. Pocahontas Land Corporation, Alpha Natural Resources, LLC, Nicewonder Contracting, Inc., White Flame Energy, Inc., Cobra Natural Resources, LLC and Equitable Production Company*, pending in the Circuit Court for Mingo County, West Virginia (the “Pending Flood Litigation”).<sup>16</sup>

31. There also may be unknown and/or unasserted claims (among various other types of claims and liabilities) against PLC or Norfolk Southern that could presently exist or may exist in the future, for which the Debtors may be obligated to indemnify and defend PLC, Norfolk Southern, and/or their affiliated or related parties under the PLC Leases and the Norfolk Southern Leases. PLC and Norfolk Southern reserve their rights under the PLC Leases, the Norfolk Southern Leases, and applicable law to assert against the Debtors or any other appropriate party, including any assignee of any of the PLC Leases or the Norfolk Southern Leases, any and all amounts that may be due and owing to PLC, Norfolk Southern, or their affiliated or related parties for the indemnification and contribution obligations under the PLC Leases and the Norfolk Southern Leases.<sup>17</sup>

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<sup>16</sup> The Pending Flood Litigation includes Civil Action No. 10-C-90, styled as *May v. Pocahontas Land Corporation, et al.*, Civil Action No. 11-C-292, styled as *Sammons v. Pocahontas Land Corporation, et al.*, and Civil Action No. 10-C-272, styled as *Kinder v. Pocahontas Land Corporation, et al.*, all pending in the Circuit Court for Mingo County, West Virginia.

<sup>17</sup> In addition, nothing in any order approving the relief requested in the Sale Motion should preclude PLC or Norfolk Southern from pursuing the Debtors’ its insurance, or any other party that may be liable under the PLC Leases or the Norfolk Southern Leases and PLC and Norfolk Southern request that any proposed sale order specifically preserve the right of PLC and Norfolk Southern to pursue such rights irrespective of any resolution of cure amounts herein.

32. In addition, and without waiving any of the foregoing, PLC and Norfolk Southern expressly reserve their right to object to any additional Cure Amount or propose alternative cure amounts, as necessary, for each of the PLC Leases and the Norfolk Southern Leases that the Debtors have failed to schedule or have not accurately scheduled as part of the Potentially Assigned Agreements but the Debtors intend to assume and assign in connection with the proposed sale(s) of the Assets (or that may be identified by a prospective purchaser of the Assets in a proposed asset purchase agreement).

33. Section 365(b)(1)(A) requires that the Debtors promptly cure outstanding balances due under the PLC Leases and the Norfolk Southern Leases upon assumption and assignment. To the extent there is a dispute over the total cure obligation for any PLC Lease or a Norfolk Southern Lease, all undisputed cure amounts should be paid immediately to PLC or Norfolk Southern. The Debtors should escrow disputed cure amounts, and this court should set a status conference within thirty (30) days of the assumption and assignment of and PLC Lease or Norfolk Southern Lease to deal with any disputes that remain unresolved after such period.

**C. Assumption and assignment of all terms, conditions, and obligations under the PLC Leases and the Norfolk Southern Leases.**

34. If the Debtors propose to assume and assign the PLC Leases and the Norfolk Southern Leases, the Debtors must assume and assign the PLC Leases and the Norfolk Southern Leases in their entirety, including any and all conditions, covenants, obligations and terms contained in each of the PLC Leases and the Norfolk Southern Leases. *See, e.g., In re New York Skyline, Inc.*, 432 B.R. 66, 77 (Bankr. S.D.N.Y. 2010) (citations omitted) (“When a debtor assumes the lease...it must assume both the benefits and burdens of the contract. Neither the debtor nor the bankruptcy court may exercise material obligations owing to the non-debtor contracting party.”). PLC and

Norfolk Southern object to the relief requested by the Debtors to the extent that the Debtors do not propose to assume and assign to a proposed purchaser of the Assets all of the terms, conditions, covenants, and obligations under each of the PLC Leases and the Norfolk Southern Leases, including, without limitation, any and all covenants and obligations for reclamation, indemnification, contribution, and development, and any and all non-monetary covenants, conditions, obligations and terms for which the Debtors are responsible pursuant to each of the PLC Leases and the Norfolk Southern Leases. The Debtors cannot assume and assign the PLC Leases or the Norfolk Southern Leases to any proposed assignee without providing adequate assurance that any and all covenants, conditions, terms, and obligations under each of the PLC Leases and the Norfolk Southern Leases will be fully assumed and satisfied by the proposed assignee. *See, e.g., In re E-Z Convenience Stores, Inc.*, 289 B.R. 45, 49 (Bankr. M.D. N.C. 2003) (citations omitted) (“When an executory contract or lease is assumed, it must be assumed *cum onere*, with all of its benefits and burdens...Debtors cannot assume favorable positions of a lease and reject unfavorable provisions or rewrite the terms when assuming a lease.”).

35. Furthermore, the Debtors cannot assume and assign the PLC Leases and the Norfolk Southern Leases on an individual basis when the PLC Leases and the Norfolk Southern Leases derive from a particular Asset or from related agreements, *i.e.*, a master lease agreement. *See, e.g., In re Buffets Holdings, Inc.*, 387 B.R. 115, 128 (Bankr. D. Del. 2008) (debtor could not assume or reject individual leases but had to assume or reject the master lease and all related agreements as a whole, where evidence established that master leases governed all related leases); *In re Kopel*, 232 B.R. 57 (Bankr. E.D. N.Y. 1999) (lease and related agreements constituted an entire transaction; debtor could not assume one agreement without curing defaults on others).

36. For example, as set forth in the Notices of the Potentially Assigned Agreements, the Debtors are proposing to assume and assign certain of the PLC Leases associated with the Rockspring Mine Complex.<sup>18</sup> Each of the PLC Leases that the Debtors are proposing to assume and assign for the Rockspring Mine Complex derive from that certain Master Lease Agreement dated March 12, 1971 (the “Rockspring Master Lease Agreement”). The Debtors must assume and assign the Rockspring Master Lease Agreement and all associated PLC Leases.<sup>19</sup> The Debtors cannot cherry pick the PLC Leases associated with the Rockspring Mine Complex and assume and assign those PLC Leases scheduled on the Potentially Assigned Agreements on an individual basis. The Debtors must assume and assign the Rockspring Master Lease Agreement in its entirety. *See, e.g., In re Buffets Holdings, Inc.*, 387 B.R. 115, 128 (Bankr. D. Del. 2008), *supra*; *In re Kopel*, 232 B.R. 57 (Bankr. E.D. N.Y. 1999), *supra*.

37. PLC and Norfolk Southern object to the relief requested by the Debtors to the extent that the Debtors do not propose to assume and assign all obligations, terms, and conditions related to the Consent Decrees, the Pending Sierra Club Litigation, and the Pending Flood Litigation for which the Debtors are responsible to PLC and Norfolk Southern under each of the PLC Leases, the Norfolk Southern Leases, and applicable law. *See, e.g., Citibank, N.A. v. Tele/Resources, Inc.*, 724 F.2d 266 (2nd Cir. 1983) (“An assignment does not modify the terms of the underlying contract. It is a separate agreement between the assignor and the assignee which merely transfers the assignor’s contract rights, leaving them in full force and effect as to the party charged....Insofar as an

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<sup>18</sup> Those leases, as identified by Alpha Natural Resources contract number, are: NEI-00007, NEI-00008, NEI-00004, NEI-00006, NEI-00001, NEI-00013, and NEI-00013.

<sup>19</sup> This includes the following leases related to the Rockspring Mine Complex that the Debtors have failed to schedule in the Notices: (a) that certain Master Sublease Agreement dated December 15, 1988; (b) that certain Amendment Two to Master Sublease dated February 26, 1991; (c) that certain Amendment Three to Master Sublease dated August 7, 1991; and (d) that certain Partial Assignment dated August 7, 1991.

assignment touches on the obligations of the other party to the underlying contract, the assignment moves into the shoes of the assignor.”) (citations omitted).

38. Any order approving any proposed assumption and assignment of any or all of the PLC Leases or the Norfolk Southern Leases, which may be entered over the objection of PLC and Norfolk Southern, must clearly provide that such assumption and assignment is pursuant to the express terms of the PLC Leases and the Norfolk Southern Leases. This includes, without limitation, that any assignee of the PLC Leases or the Norfolk Southern Leases continues to be responsible for any and all reclamation obligations, express and implied development covenants and obligations, and indemnification and contribution obligations under the PLC Leases or the Norfolk Southern Leases, regardless of when such covenants or obligations arose (and regardless of whether any such reclamation, indemnification, express and implied development covenants, and contribution obligations are known or unknown, liquidated or unliquidated, due or to become due, accrued or unaccrued, or otherwise).

39. PLC and Norfolk Southern also request that any order approving the assumption and assignment of the PLC Leases or the Norfolk Southern Leases, which may be entered over the objection of PLC and Norfolk Southern, provide that any assignee of the PLC Leases or the Norfolk Southern Leases will be responsible for all accrued but unbilled charges under the PLC Leases or the Norfolk Southern Leases, whether accruing prior to or after the effective date of assumption and assignment of the PLC Leases or the Norfolk Southern Leases, when such charges become due in accordance with the terms of the PLC Leases or the Norfolk Southern Leases. This result is mandated by the requirement that the Debtors cure all arrears under the PLC Leases and the Norfolk Southern Leases and that the Debtors provide adequate assurance of future performance to PLC and Norfolk Southern. *See 11 U.S.C. § 365(b)(1); see also Matter of GP Exp. Airlines, Inc., 200 B.R.*

222 (Bankr. D. Neb. 1996) (debtor cannot assume a contract or lease unless the debtor cures all defaults and provides assurance of future performance).

40. Ultimately, any assumption and assignment of the PLC Leases and the Norfolk Southern Leases must be conditioned upon, among other things: (a) full compliance by the Debtors with section 365 of the Bankruptcy Code, including, but not limited to, PLC and Norfolk Southern receiving adequate notice and a sufficient opportunity to be heard with respect to any proposed assumption and assignment of any PLC Lease or Norfolk Southern Lease; (b) the payment to PLC or Norfolk Southern of all amounts due and owing under any PLC Lease or Norfolk Southern Lease through the effective date of assumption and assignment of the PLC Lease or the Norfolk Southern Lease; (c) the provision by the Debtors and/or the proposed assignee of a PLC Lease or a Norfolk Southern Lease of sufficient adequate assurance of future performance information; and (d) PLC and Norfolk Southern being provided with sufficient time and opportunity to submit any objections (to the extent deemed necessary) regarding the proposed adequate assurance of future performance, with the opportunity to prepare for any hearing with respect to any proposed assumption and assignment of any PLC Lease or Norfolk Southern Lease. Until such time as the Debtors furnish to PLC and Norfolk Southern proper adequate assurance information and any information regarding a proposed assignee of a PLC Lease or a Norfolk Southern Lease, PLC and Norfolk Southern reserve their rights to evaluate that adequate assurance information and to object to the proposed sale of the Assets and the assumption and assignment of any of the PLC Leases or the Norfolk Southern Leases.<sup>20</sup>

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<sup>20</sup> PLC and Norfolk Southern submit that the Debtors must provide PLC and Norfolk Southern with the following adequate assurance information in connection with the proposed assumption and assignment of the PLC Leases and the Norfolk Southern Leases: (a) any and all information provided to the Debtors by any proposed purchaser(s) of the Assets in connection with their bid(s) to purchase the Assets; (b) copies of the proposed assignee's balance

41. In addition, and without waiving any of the foregoing objections, PLC submits that certain of the PLC contracts and leases scheduled by the Debtors in the Notices are not executory contracts and leases that cannot be assumed and assigned by the Debtors as part of the proposed sale(s) of the Assets. Specifically, and without limitation, the Debtors have scheduled as a Potentially Assumed Agreement certain right of way/easement agreements between PLC and the Debtors. PLC objects to the characterization by the Debtors of these right of way/easement agreements as executory contracts and submits that these right of way/easement agreements are interests in the underlying land and the Debtors may not sell their interests in the underlying land free and clear of the right of way/easement agreements granted to and in favor of PLC. *See, e.g., U.S. v. Blackman*, 270 Va. 68, 613 S.E.2d 442 (Va. 2005) (holding that an easement appurtenant runs with the land); *In re Oyster Bay Cove, Ltd.*, 196 B.R. 251, 255-256 (E.D. N.Y. 1996) (“absent the consent of the owner of the easement or the easement being in a bona fide dispute, the Bankruptcy Code does not even allow the Bankruptcy Court to authorize a sale of the property ‘free and clear’ of an easement”). All rights of PLC to further object to the Sale Motion and the proposed sale(s) of the Assets as said sale(s) may impact these specific right of way/easement agreements are reserved by PLC.

42. Finally, PLC and Norfolk Southern object at this time to the assumption and assignment of any of the PLC Leases or the Norfolk Southern Leases to the extent that the provisions in the PLC Leases or the Norfolk Southern Leases prohibit the assumption and

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sheets and cash flow statements; (c) copies of the proposed assignee’s financial projections for the Assets to be purchased and the PLC Leases and the Norfolk Southern Leases to be assumed and assigned; (d) copies of any and all mining plans of the proposed assignee for the PLC Leases and the Norfolk Southern Leases; (e) copies of the business plan for the mine and mining operations proposed to be purchased by the proposed assignee of the PLC Leases and the Norfolk Southern Leases; (f) copies of cash flow projections for the mining operations proposed to be purchased for the next 24 months; and (g) evidence of the ability of the proposed assignee to obtain reclamation bonds and comply with any and all reclamation requirements under applicable law.

assignment of the PLC Leases and the Norfolk Southern Leases by the Debtors without the consent of PLC or Norfolk Southern.

**RESERVATION OF RIGHTS**

43. Nothing in this Objection is intended to be, or should be construed as, a waiver by PLC or Norfolk Southern of any of their rights under any of the PLC Leases, the Norfolk Southern Leases, the Bankruptcy Code, or applicable law. PLC and Norfolk Southern expressly reserve all such rights, including, without limitation, the right to (a) supplement and/or amend this Objection and to assert any additional objections with respect to any proposed assumption and assignment of the PLC Leases or the Norfolk Southern Leases on any and all grounds; (b) assert any and all additional objections with the Debtors' Cure Costs and amend or supplement any objections thereto; (c) assert any nonmonetary defaults under the PLC Leases or Norfolk Southern Leases; (d) assert any rights for indemnification or contribution against the Debtors arising under the PLC Leases or Norfolk Southern Leases; (e) assert any additional objections to the assumption and assignment of the PLC Leases or the Norfolk Southern Leases to a proposed purchaser of the Assets; and (f) assert any objections to the Sale Motion and the proposed sale(s) of the Assets.

**JOINDER**

44. PLC and Norfolk Southern join in any objections filed by other lessors and parties in interest to the extent that they are not inconsistent with this Objection.

WHEREFORE, PLC and Norfolk Southern respectfully requests that this Court (a) sustain this Objection and (b) grant PLC and Norfolk Southern such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: January 11, 2016

POCAHONTAS LAND CORPORATION,  
POCAHONTAS DEVELOPMENT  
CORPORATION and NORFOLK SOUTHERN  
RAILWAY COMPANY

By: s/ Augustus C. Epps, Jr.  
Augustus C. Epps, Jr., Esquire (VSB No. 13254)  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Telephone: (804) 697-4100  
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and

Ronald E. Gold, Esq. (Ohio Bar No. 0061351)  
Adam R. Kegley, Esq. (Ky. Bar No. 87494)  
FROST BROWN TODD LLC  
3300 Great American Tower  
301 East Fourth Street  
Cincinnati, Ohio 45202  
Telephone: (513) 651-6800  
Facsimile: (513) 651-6981

*Counsel for Pocahontas Land  
Corporation, Pocahontas Development  
Corporation and Norfolk Southern  
Railway Company*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2016, a copy of the foregoing was served by email or mail on the parties shown on the attached Exhibit F (as required by the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111)) and on the following parties by first class mail:

Richard H. Verheij, Esquire  
Alpha Natural Resources Inc.  
One Alpha Place  
P.O. Box 16429  
Bristol, Virginia 24209

Jeffrey B. Ellman, Esquire  
Jones Day  
1420 Peachtree St. NE, Suite 800  
Atlanta, Georgia 30309

Evan R. Fleck, Esquire and  
Eric K. Stodola, Esquire  
Milbank, Tweed, Hadley & McCloy LLP  
28 Liberty Street  
New York, New York 10005

Damian S. Schaible, Esquire  
Damon P. Meyer, Esquire  
Davis Polk & Wardwell LLP  
450 Lexington Avenue,  
New York, New York 10017

Paul M. Basta, Esquire  
Stephen E. Hessler, Esquire  
Brian E. Schartz Esquire  
Kirkland & Ellis LLP  
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New York, New York, 10022

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Cleveland Ohio 44114

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Sands Anderson PC  
P.O. Box 1998  
Richmond, Virginia 23218

Dion W. Hayes, Esquire  
Sarah B. Boehm, Esquire  
K. Elizabeth Sieg, Esquire  
McGuireWoods LLP,  
Gateway Plaza  
800 East Canal Street  
Richmond, Virginia 23219

Michael A. Condyles, Esquire  
Kutak Rock LLP  
1111 East Main Street, Suite 800  
Richmond, Virginia 23219

\_\_\_\_\_  
/s/ Augustus C. Epps, Jr.

Augustus C. Epps, Jr.0126327.0629367 4810-

7045-7132v2

## **Exhibit A**



**Ronald E Gold**  
Member  
513.651.6156 (t)  
513.651.6981 (f)  
[rgold@fbtlaw.com](mailto:rgold@fbtlaw.com)

December 18, 2015

**VIA EMAIL**

Jeffrey B. Ellman, Esq.  
Jones Day  
1420 Peachtree Street, Suite 800  
Atlanta, GA 30309

**Re: In re Alpha Natural Resources, Inc., et al., Case No. 15-33896**

Dear Jeff:

As you know, we represent Pocahontas Land Company ("PLC") in the Debtors' chapter 11 cases. PLC is currently reviewing the various schedules (the "Proposed Assumption Schedules") filed by the Debtors of the contracts and leases that may be assumed and assigned as part of the proposed sale. As you may know, PLC and the Debtors are parties to in excess of 400 contracts and leases.

In reviewing the Proposed Assumption Schedules, PLC is having difficulty reconciling their records with the specific PLC contracts and leases that are listed by the Debtors on the Proposed Assumption Schedules. For example, for certain of mines and permits that are proposed to be sold by the Debtors, there is more than one contract and lease with PLC. In reviewing the records of PLC, because the Debtors did not provide specific information as to the contract or lease date or other information in the Proposed Assumption Schedules, PLC is uncertain whether the Debtors have scheduled all relevant contracts and leases for a mine and permit. Better stated, PLC believes that the Debtors' proposed Assumption Schedules may not be complete.

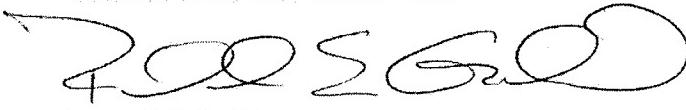
We would like to schedule a call with the Debtors and its business representatives to discuss the Proposed Assumption Schedules. Given the fast approaching January 11<sup>th</sup> deadline, we would like to schedule this call as soon as possible.

Jeffrey B. Ellman  
December 18, 2015  
Page 2

Thank you in advance. We look forward to hearing from you.

Regards,

FROST BROWN TODD LLC



Ronald E Gold

REG:mj

cc: Kevin Andris, Esq. (via email)  
Adam Kegley, Esq. (via email)  
Gus Epps, Esq. (via email)

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## **Exhibit B**

Exhibit B  
Supplemental Schedule

Complex	ANR Contract / Asset #	Execution Date	Cure Amount	Description	Debtor	Creditor Name
Litwar Complex	RIV-00017.012	8/5/2002	\$	Memorandum of Understanding	Riverside Energy Company, LLC	Pocahontas Land Corporation
Litwar Complex	RIV-00026	9/1/1983	\$	Real Estate Lease - In (Debtor Entity As Lessee)	Riverside Energy Company, LLC	Pocahontas Land Corporation
Litwar Complex	RIV-00092	7/1/1979	\$ 350.00	Real Estate Lease - In (Debtor Entity As Lessee)	Riverside Energy Company, LLC	Pocahontas Land Corporation
Delbarton Complex	DEL-00001	6/27/2000	\$	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	Pocahontas Land Corporation
Delbarton Complex	DMC-1	6/27/2000	\$ 212,968.66	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	Pocahontas Land Corporation
Delbarton Complex	DMC-9	6/7/2001	\$ 313,193.66	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	Pocahontas Land Corporation
Delbarton Complex	DMC-10	8/7/2001	\$ 44,018.79	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	Pocahontas Land Corporation
Delbarton Complex	DEL-00001.003	2/28/2008	\$	Right of Way Agreement / Easement	Delbarton Mining Company	Pocahontas Land Corporation
Delbarton Complex	DEL-00001.005	12/16/2010	\$	Right of Way Agreement / Easement	Delbarton Mining Company	Pocahontas Land Corporation
Bandmill Complex	128-041	8/1/1997	\$	Real Estate Lease - In (Debtor Entity As Lessee)	Boone East Development Co.	Pocahontas Land Corporation
Sidney Complex	1000	8/1/1989	\$	Coal Lease	Lauren Land Company	POCAHONTAS DEVELOPMENT CORPORATION
Sidney Complex	BCL-179	4/28/2004	\$	Coal Lease	Lauren Land Company	POCAHONTAS DEVELOPMENT CORPORATION
Sidney Complex	BCL-246	11/12/2008	\$	Coal Lease	Lauren Land Company	POCAHONTAS LAND CORPORATION
Sidney Complex	BCL-74	1/31/1992	\$	Coal Lease	Lauren Land Company	POCAHONTAS DEVELOPMENT CORPORATION
Sidney Complex	BCL-75	1/31/1992	\$	Coal Lease	Lauren Land Company	POCAHONTAS DEVELOPMENT CORPORATION
Sidney Complex	BCL-79	2/22/1993	\$	Coal Lease	Lauren Land Company	POCAHONTAS DEVELOPMENT CORPORATION
Cobra	BRS-00028	10/1/1987	\$ 40,770.06	Real Estate Lease - In (Debtor Entity As Lessee)	Brooks Run South Mining, LLC	Pocahontas Land Corporation
Cobra	BRS-00030	5/10/1990	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Brooks Run South Mining, LLC	Pocahontas Land Corporation
Premium Energy	PRE-00105	7/26/2004	\$	- License Agreement	Premium Energy, LLC	Pocahontas Land Corporation
Premium Energy	PRE-00107	4/7/2009	\$	- License Agreement	Premium Energy, LLC	Pocahontas Land Corporation
Rawl	1254H	3/3/1998	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & Pocahontas Land Corp
Rawl	1254H	3/3/1998	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & Pocahontas Land Corp
Rawl	1254H	3/3/1998	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & Pocahontas Land Corp
Rawl	1254J	10/6/1999	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & Pocahontas Land Corp
Rawl	1254J	10/6/1999	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & Pocahontas Land Corp
Rawl	1254J	10/6/1999	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & Pocahontas Land Corp
Rawl	TV-1000	8/1/1989	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	Pocahontas Development Corporation
Rawl	Agreement	11/25/1994	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	Pocahontas Development Corporation
Rawl	Agreement	2/3/1995	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	Pocahontas Land Corp & Pocahontas Development Corporation
Rawl	Agreement	1/1/1998	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	Pocahontas Land Corp & Pocahontas Development Corporation
Rawl	Partial Assignment	7/12/2000	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	Pocahontas Land Corp & Pocahontas Development Corporation
Rawl	BCL-79	2/22/1993	\$ 23,647.00	Coal Lease Agreement	Lauren Land Company	Pocahontas Development
Twin Star & Buchanan	BUC-00011.001	8/30/1991	\$	- Right of Way Agreement / Easement	Buchanan Energy Company, LLC	Pocahontas Gas Partnership
Cucumber	ALR-00620	12/10/1999	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Alpha Land and Reserves, LLC	Pocahontas Land Corporation
Knox Creek	KNO-00076	5/3/1994	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Knox Creek Coal Corporation	Pocahontas Gas Partnership
Knox Creek	KNO-00131	2/13/2002	\$	- Sublease - In (Debtor As Sub lessee)	Knox Creek Coal Corporation	Pocahontas Gas Partnership
Knox Creek	BCL-246	11/12/2008	\$	- Real Estate Lease-in	Lauren Land Company	Pocahontas Land Company
Martin County Coal	MCC-00070	6/1/1969	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Martin County Coal Corporation	Pocahontas Development Corporation
Martin County Coal	MCC-00071	7/1/1972	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Martin County Coal Corporation	Pocahontas Development Corporation
Martin County Coal	MCC-00070.006	9/1/1987	\$	- Overriding Royalty Agreement	Martin County Coal Corporation	Pocahontas Development Corporation
Martin County Coal	MCC-00071.005	5/6/1985	\$	- Right of Way Agreement / Easement	Martin County Coal Corporation	Pocahontas Development Corporation
Martin County Coal	MCC-00071.001	5/14/1981	\$	- Sublease - Out (Debtor As Sub lessor)	Martin County Coal Corporation	Pocahontas Development Corporation
Rockspring Mine	NEI-00007	10/30/1998	\$	- Real Estate Lessee - In (Debtor Entity As Lessee)	Neweagle Industries, Inc.	Norfolk Southern Railway Company, By Its Agent, Pocahontas Land Corporation
Rockspring Mine	NEI-00008	1/31/1994	\$ 51,473.24	Real Estate Lease - In (Debtor Entity As Lessee)	Neweagle Industries, Inc.	Norfolk Southern Railway Company, By Its Agent, Pocahontas Land Corporation
Rockspring Mine	NEI-00004	1/31/1994	\$	- Sublease - In (Debtor As Sub lessee)	Neweagle Industries, Inc.	Norfolk Southern Railway Company, By Its Agent, Pocahontas Land Corporation
Rockspring Mine	NEI-00006	3/18/2014	\$ 482,409.09	Real Estate Lease - In (Debtor Entity As Lessee)	Neweagle Industries, Inc.	Pocahontas Land Corporation Agent Of Southern Region Industrial Reality, Inc.
Rockspring Mine	NEI-00001	6/1/2004	\$ 30,921.90	Real Estate Lease - In (Debtor Entity As Lessee)	Neweagle Industries, Inc.	Norfolk Southern Tower, LLC By Its Agent, Pocahontas Land Corporation
Rockspring Mine	NEI-00013	1/31/1994	\$	- Real Estate Lease - In (Debtor Entity As Lessee)	Neweagle Industries, Inc.	Pocahontas Land Corporation
Rockspring Mine	NEI-00014	1/31/1994	\$	- Sublease - In (Debtor As Sub lessee)	Neweagle Industries, Inc.	Pocahontas Land Corporation

## **Exhibit C**



**Ronald E Gold**  
Member  
513.651.6156 (t)  
513.651.6981 (f)  
rgold@fbtlaw.com

January 7, 2016

**VIA EMAIL**

Jeffrey B. Ellman, Esq.  
Jones Day  
1420 Peachtree Street, Suite 800  
Atlanta, GA 30309

**Re: In re Alpha Natural Resources, Inc., et al. (the "Debtors"),  
Case No. 15-33896**

Dear Jeff:

As you know, we represent Pocahontas Land Corporation ("PLC") and Norfolk Southern Corporation ("NS"). We are writing to follow up on our letter to you dated December 18, 2015 (the "December 18th Letter"). Thank you for sending us a schedule prepared by the Debtors in response to the December 18th letter (the "December 30th Schedule"). Unfortunately, PLC and NS are still having difficulty identifying all of the PLC and NS contracts and leases that the Debtors propose to assume and assign as part of the upcoming sale of closed mines.

As you know, PLC and NS have been unable to identify each of the PLC and NS contracts and leases that the Debtors propose to assume and assign based upon the Notices filed with the Bankruptcy Court and the Proposed Assignment Schedules. The Debtors did not identify the contracts and leases with any degree of specificity (including providing the dates of the respective contracts and leases) in the Notices and in the Proposed Assignment Schedules. In addition, the Debtors have not scheduled certain master leases that control several of the mine properties that are the subject of the proposed sale. The December 30th Schedule is equally confusing for PLC and NS, as there are at least 15 contracts and leases listed by the Debtors that PLC and NS are not able to identify and several other contracts and leases that are not scheduled at all.

Given the January 11th objection deadline, we are preparing an objection as to cure costs and the proposed assumption and assignment of the PLC and NS contracts and leases. We will also advise the Court in our objection that because PLC and NS have been unable to identify all of the contracts and leases we are objecting to the Notices and the proposed sale and requesting that the Debtors amend the proposed assignment schedules prior to any sale.

Jeffrey B. Ellman  
January 7, 2016  
Page 2

Notwithstanding our objection, we would like to work with the Debtors to ensure that all of the PLC and NS contracts and leases that the Debtors intend to assume and assign are accurately and properly identified and scheduled. We would like to schedule a call with the Debtors as soon as possible to go over the Debtors' Proposed Assignment Schedules and the issues identified by PLC and NS. Please let us know if the Debtors are available for a call with representatives of PLC and NS.

We look forward to hearing from you.

Very truly yours,

**FROST BROWN TODD LLC**



Ronald E Gold

REG:mj

cc: Kevin Andris, Esq. (via email)  
Adam Kegley, Esq. (via email)  
Adam J. Webb (via email)  
Gus Epps, Esq. (via email)

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## **Exhibit D**

**Exhibit D**  
**PLC Leases and Contracts Schedule**

A	B	C	D	E	F	G	H	I	J
1									
2	Complex	ANR Contract / Asset #	Execution Date	Debtors' Proposed Cure Amount	PLC Cure Amount	Description	Debtor	Creditor Name	Notes
3	Litwar Complex	RIV-00017.012	8/5/2002	\$ -	\$ 64,576.86	Memorandum of Understanding	Riverside Energy Company, LLC	PLC	
4	Litwar Complex	RIV-00026	9/1/1983	\$ -	\$ 350.00	Real Estate Lease - In (Debtor Entity As Lessee)	Riverside Energy Company, LLC	PLC	
5	Litwar Complex	RIV-00092	7/1/1979	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Riverside Energy Company, LLC	PLC	No record of this lease or contract
6	Delbarton Complex	DEL-00001	6/27/2000	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	PLC	No record of this lease or contract
7	Delbarton Complex	DMC-1	6/27/2000	\$ 212,968.66	\$ 425,709.30	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	PLC	
8	Delbarton Complex	DMC-9	6/7/2001	\$ 313,193.66	\$ 326,387.32	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	PLC	Lease Execution Date should be 8/7/2001
9	Delbarton Complex	DMC-10	8/7/2001	\$ 44,018.79	\$ 88,021.62	Real Estate Lease - In (Debtor Entity As Lessee)	Delbarton Mining Company	PLC	
10	Delbarton Complex	DEL-00001.003	2/28/2008	\$ -	\$ -	Right of Way Agreement / Easement	Delbarton Mining Company	PLC	
11	Delbarton Complex	DEL-00001.005	12/16/2010	\$ -	\$ -	Right of Way Agreement / Easement	Delbarton Mining Company	PLC	
12	Bandmill Complex	12B-041	8/1/1997	\$ -	\$ 302,545.48	Real Estate Lease - In (Debtor Entity As Lessee)	Boone East Development Co.	PLC	
13	Sidney Complex	1000	8/1/1989	\$ -	\$ -	Coalease	Lauren Land Company	PDC	
14	Sidney Complex	BCL-179	4/28/2004	\$ -	\$ -	Coalease	Lauren Land Company	PDC	
15	Sidney Complex	BCL-246	11/12/2008	\$ -	\$ -	Coalease	Lauren Land Company	PLC	No record of an 11/12/2008 lease
16	Sidney Complex	BCL-74	1/31/1992	\$ -	\$ -	Coalease	Lauren Land Company	PDC	
17	Sidney Complex	BCL-75	1/31/1992	\$ -	\$ -	Coalease	Lauren Land Company	PDC	
18	Sidney Complex	BCL-79	2/22/1993	\$ -	\$ -	Coalease	Lauren Land Company	PDC	
19	Cobra	BRS-000028	10/5/1987	\$ 40,770.06	\$ 134,463.50	Real Estate Lease - In (Debtor Entity As Lessee)	Brooks Run South Mining, LLC	PLC	
20	Cobra	BRS-00030	5/10/1990	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Brooks Run South Mining, LLC	PLC	No record of a lease or contract with this date
21	Premium Energy	PRE-00105	7/26/2004	\$ -	\$ -	License Agreement	Premium Energy, LLC	PLC	
22	Premium Energy	PRE-00107	4/7/2009	\$ -	\$ -	License Agreement	Premium Energy, LLC	PLC	
23	Rawl	1254H	3/3/1998	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
24	Rawl	1254H	3/3/1998	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
25	Rawl	1254H	3/3/1998	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
26	Rawl	1254H	10/6/1999	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
27	Rawl	1254H	10/6/1999	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
28	Rawl	1254H	10/6/1999	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
29	Rawl	TV-1000	8/1/1989	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	David L. Francis Trust & PLC	No record of a lease or contract with these names
30	Rawl	Agreement	11/25/1994	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	PDC	
31	Rawl	Agreement	2/3/1995	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	PDC & PDC	
32	Rawl	Agreement	1/1/1998	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	PDC & PDC	
33	Rawl	Partial Assignment	7/12/2000	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Rawl Sales & Processing Co.	PDC & PDC	
34	Rawl	BCL-79	2/22/1993	\$ 23,647.00	\$ 906,217.90	Coalease Agreement	Lauren Land Company	PDC	
35	Twin Star & Buchanan	BUC-00011.001	8/30/1991	\$ -	\$ -	Right of Way Agreement / Easement	Buchanan Energy Company, LLC	Pocahontas Gas Partnership	Not affiliated with PLC
36	Cucumber	ALR-00620	12/10/1999	\$ -	\$ 226,498.48	Real Estate Lease - In (Debtor Entity As Lessee)	Alpha Land and Reserves, LLC	PLC	
37	Knox Creek	KNO-00076	5/3/1994	\$ -	\$ -	Real Estate Lease - In (Debtor Entity As Lessee)	Knox Creek Coal Corporation	Pocahontas Gas Partnership	Not affiliated with PLC
38	Knox Creek	KNO-00131	2/13/2002	\$ -	\$ -	Sublease - In (Debtor As Sub lessee)	Knox Creek Coal Corporation	Pocahontas Gas Partnership	Not affiliated with PLC
39	Knox Creek	BCL-246	11/12/2008	\$ -	\$ -	Real Estate Lease-in	Lauren Land Company	PLC	No record of an 11/12/2008 lease
40	Martin County Coal	MCC-00070	6/1/1969	\$ -	\$ 44,178.08	Real Estate Lease - In (Debtor Entity As Lessee)	Martin County Coal Corporation	PDC	
41	Martin County Coal	MCC-00071	7/1/1972	\$ -	\$ 73,630.14	Real Estate Lease - In (Debtor Entity As Lessee)	Martin County Coal Corporation	PDC	
42	Martin County Coal	MCC-00070.006	9/1/1987	\$ -	\$ -	OVERRIDING ROYALTY AGREEMENT	Martin County Coal Corporation	PDC	
43	Martin County Coal	MCC-00071.005	5/6/1985	\$ -	\$ -	Right of Way Agreement / Easement	Martin County Coal Corporation	PDC	
44	Martin County Coal	MCC-00071.001	5/14/1981	\$ -	\$ -	Sublease - Out (Debtor As Sub lessor)	Martin County Coal Corporation	PDC	
45	Rockspring Mine	NEI-00007	10/30/1998	\$ -	\$ -	See Master Lease	Rockspring Industries, Inc.	NSRC, By Its Agent, PLC	
46	Rockspring Mine	NEI-00008	1/31/1994	\$ 51,473.24	\$ -	See Master Lease	Rockspring Industries, Inc.	NSRC, By Its Agent, PLC	
47	Rockspring Mine	NEI-00004	1/31/1994	\$ -	\$ -	See Master Lease	Rockspring Industries, Inc.	NSRC, By Its Agent, PLC	
48	Rockspring Mine	NEI-00006	3/18/2014	\$ 482,409.09	\$ -	See Master Lease	Rockspring Industries, Inc.	PLC Agent Of SRIR	
49	Rockspring Mine	NEI-00001	6/1/2004	\$ 30,921.90	\$ -	See Master Lease	Rockspring Industries, Inc.	Norfolk Southern Tower, LLC, By Its Agent, PLC	
50									
51	Rockspring Mine	NEI-00013	1/31/1994	\$ -	\$ -	See Master Lease	Rockspring Industries, Inc.	PLC	
52	Rockspring Mine	NEI-00014	1/31/1994	\$ -	\$ -	See Master Lease	Rockspring Industries, Inc.	PLC	
53	Rockspring Mine		3/12/1971	\$ -	\$ 1,928,842.72	Master Lease	Rockspring Industries, Inc.	PLC	Missing - lease not scheduled by Debtors
54	Rockspring Mine		12/15/1988	\$ -	\$ -	Master Sublease	Rockspring Industries, Inc.	PLC	Missing - lease not scheduled by Debtors
55	Rockspring Mine		2/26/1991	\$ -	\$ -	Amendment 2 to Master Sublease	Rockspring Industries, Inc.	PLC	Missing - lease not scheduled by Debtors
56	Rockspring Mine		8/7/1991	\$ -	\$ -	Amendment 3 to Master Sublease	Rockspring Industries, Inc.	PLC	Missing - lease not scheduled by Debtors
57	Rockspring Mine		8/7/1991	\$ -	\$ -	Partial Assignment	Rockspring Industries, Inc.	PLC	Missing - lease not scheduled by Debtors
58		Total Cure Amount		\$ 1,199,752.40	\$ 4,521,071.40				

## **Exhibit E**

**Exhibit E**  
**Norfolk Southern Leases and Contracts Schedule**

No.	Counterparty Name and Address	Description of Contract	Debtor	Related Asset	Alpha Natural Resources Contract No.	Debtors' Proposed Cure Amount	Norfolk Southern Cure Amount
1	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	License Agreement	Brooks Run South Mining	Cobra	BRS-00037	\$ -	*
2	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	Track Agreement	Brooks Run South Mining	Cobra	BRS-00043	\$ -	*
3	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	Track Agreement	Brooks Run South Mining	Cobra	BRS-00046	\$ -	*
4	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	Track Agreement	Rockspring Development Inc.	Rockspring Development	RDI-00003	\$ -	*
5	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	Real Estate Lease Debtor Entity as Lessee	Neweagle Industries, Inc.	Rockspring Mine	NEI-00013	\$ -	*
6	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	Sublease Debtor as Sublessee	Neweagle Industries, Inc.	Rockspring Mine	NEI-00014	\$ -	*
7	Norfolk & Western Railway Co. 1200 Peachtree Street NE Atlanta, GA	Real Estate Lease Debtor Entity as Lessee	Knox Creek Coal Corp.	Knox Creek	KNO-00151	\$ -	*
8	Norfolk & Western Railway Co. 1200 Peachtree Street NE Atlanta, GA	Track Agreement	Martin County Coal Corp.	Martin County Coal	MCC-00003	\$ -	*
9	Norfolk & Western Railway 110 Franklin Road Roanoke, VA	Real Estate Lease Debtor Entity as Lessee	Knox Creek coal Corp.	Knox Creek	KNO-00150	\$ -	*
10	Norfolk & Western Railway Co. 1200 Peachtree Street NE Atlanta, GA	Right of Entry/ License	Lauren Land Co.	Martin County Coal	LCC-00008	\$ -	*
11	Norfolk & Western Railway 110 Franklin Road S.E. Roanoke, VA	Real Estate Lease Debtor Entity as Lessee	Knox Creek coal Corp.	Knox Creek	KNO-00150	\$ -	*
12	Norfolk & Western Railway 110 Franklin Road S.E. Roanoke, VA	Crossing Agreement Road, Gate, Etc	Brooks Run South Mining	Cobra	BRS-00045	\$ -	*
13	Norfolk Southern Railway Co. 800 Princeton Ave Bluefield, WV	Track Agreement	Brooks Run South Mining	Cobra	BRS-00036	\$ -	*
14	Norfolk Southern Railway Co. 800 Princeton Ave Bluefield, WV	Crossing Agreement Road, Gate, Etc	Riverside Energy Co., LLC	Cucumber	RIV-00033	\$ -	*
15	Norfolk Southern Railway Co. 800 Princeton Ave Bluefield, WV	Track Agreement	Riverside Energy Co., LLC	Cucumber	RIV-00032	\$ -	*

**Exhibit E**  
**Norfolk Southern Leases and Contracts Schedule**

No.	Counterparty Name and Address	Description of Contract	Debtor	Related Asset	Alpha Natural Resources Contract No.	Debtors' Proposed Cure Amount	Norfolk Southern Cure Amount
16	Norfolk Southern Railway Co. 800 Princeton Ave Bluefield, WV	Overhead Belt Conveyer Agreement	Martin County Coal Corp.	Martin County Coal	MCC-00001	\$ -	*
17	Norfolk Southern Railway Co. 1200 Peachtree Street, NE Atlanta, GA	Real Estate Lease Debtor Entity as Lessee	Brooks Run South Mining	Cobra	BRS-00056	\$ -	*
18	Norfolk Southern Railway Co. 1200 Peachtree Street, NE Atlanta, GA	Track Agreement	Buchanan Energy Co., LLC	Twin Star & Buchanan	BUC-00026	\$ -	*
19	Norfolk Southern Railway Co. 800 Princeton Avenue Bluefield, WV	Track Agreement	Delbarton Mining Co.	Delbarton Complex	DEI-00017	\$ -	*
<b>Total Cure Amount:</b>					<b>\$ -</b>	<b>\$ 1,170.48</b>	

\*Due to insufficient information provided by the Debtors regarding the Norfolk Southern leases and contracts, as outlined in the Objection, Norfolk Southern is only able to provide an aggregate cure amount at this time.

## **Exhibit F**





1454/2002

White Ether Woodrow, Edelman & Dicker LLP	David M. Ross	Washington	DC	20001	202-424-7687	202-424-3606	david.ross@whiteether.com
White Ether Woodrow, Edelman & Dicker LLP	Cullen C. Stoeckert	Convergence Center N		200 Bremo Rd Site 300	Virginia Beach	VA	23453
White Ether Woodrow, Edelman & Dicker LLP	Richard C. Matson	10 S. Jefferson St. Site 1400		P.O. Box 14725	Rosemont	VA	24038
White Ether Woodrow, Edelman & Dicker LLP	White Ether Woodrow, Edelman & Dicker LLP	ROYAL COMPLIANCE DIVISION		122 W 21st ST 3RD FL WEST	CHARLESTON	WV	25302-0600
White Ether Woodrow, Edelman & Dicker LLP	White Ether Woodrow, Edelman & Dicker LLP	WHITE EETHER LENDER		2731 Cr. Hollow Site 200	HARRISONBURG	VA	24327-0006
White Ether Woodrow, Edelman & Dicker LLP	White Ether Woodrow, Edelman & Dicker LLP	WHITE EETHER LENDER		751-632-0000	WHITE HORN	VA	24327-0006
White Ether Woodrow, Edelman & Dicker LLP	White Ether Woodrow, Edelman & Dicker LLP	WHITE EETHER LENDER		751-632-0000	WHITE HORN	VA	24327-0006
White Ether Woodrow, Edelman & Dicker LLP	White Ether Woodrow, Edelman & Dicker LLP	WHITE EETHER LENDER		751-632-0000	WHITE HORN	VA	24327-0006